

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 20-211V

TRINA LOWER,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 1, 2024

Leigh Finfer, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Debra A. Filteau Begley, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On February 26, 2020, Trina Lower filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza vaccine administered on November 18, 2017. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 8, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On February 26, 2024, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$81,618.31 (comprised of \$80,000.00 for pain and suffering and \$1,618.31 for out-of-pocket expenses). Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$81,618.31 (comprised of \$80,000.00 for pain and suffering and \$1,618.31 for out-of-pocket expenses) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

On February 26, 2020, Trina Lower (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to 34 (“Vaccine Act” or “Act”), alleging that she suffered a shoulder injury related to vaccine administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine on November 18, 2017. ECF # 1 (Petition). On December 1, 2022, the Secretary of Health and Human Services (“respondent”) filed a combined Vaccine Rule 4(c) Report recommending against compensation and Response to Petitioner’s Motion for a Ruling on the Record.¹ ECF # 60. One year later, on December 8, 2023, Chief Special Master Corcoran issued a Ruling on Entitlement which included a factual finding that petitioner’s shoulder pain began within 48 hours of her November 18, 2017 vaccination. ECF # 61. Based on that factual finding, and respondent’s acknowledgement that all other requirements for a Table SIRVA claim

¹ Respondent explained that petitioner's most contemporaneous medical records contain only vague references to onset and do not specifically put the onset of her shoulder pain within the 48-hour Vaccine Table timeframe for SIRVA, and recommended that petitioner's request for a ruling on the record be denied. Other than onset, respondent agreed that all other SIRVA requirements were met. *See* ECF # 60; 42 C.F.R. § 100.3(c)(10).

were met, the Chief Special Master concluded that petitioner was entitled to compensation for a Table SIRVA claim.² *See id.*

I. Items of Compensation

Based on the evidence of record, respondent proffers that petitioner should be awarded a total of **\$81,618.31, for all damages**, which includes \$80,000.00 representative of pain and suffering, and \$1,618.31 representative of out-of-pocket medical and related expenses. These amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below, and requests that the Chief Special Master's damages decision and the Court's judgment award the following: a lump sum payment of **\$81,618.31** in the form of a check payable to petitioner.³ Petitioner agrees.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

² Respondent has no objection to the amount of the proffered award of damages set forth herein. Assuming the Chief Special Master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of such damages decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Chief Special Master's December 8, 2023, entitlement decision.

³ Should petitioner die prior to the entry of judgment, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages, and the parties reserve the right to move the Court for appropriate relief.

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